

December 6

AGENDA

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TUESDAY, DECEMBER 6, 1994, 9:00 A.M. - 12:00 P.M.

SENATE FINANCE COMMITTEE ROOM - M-451

1. Approval of Minutes - Meeting November 14, 1994
2. Review of Legislative Rules:
 - a. Dept. of Health and Human Resources
Behavioral Health Patient Rights Rule
 - b. Office of Air Quality
To Prevent and Control Air Pollution from the Operation
of Coal Preparation Plants and Coal Handling Operations
 - c. Office of Air Quality
Permits for Construction and Major Modification of Major
Stationary Sources of Air Pollution for the Prevention
of Significant Deterioration
 - d. Environmental Quality Board
Requirements Governing Water Quality Standards
 - e. Water Resources
Dam Safety Regulations
 - f. Water Resources
Regulations Governing Environmental Laboratories
Certification and Standards of Performance
 - g. Alcohol Beverage Control Commission
Nonintoxicating Beer Licensing and Operations
Procedures
 - h. Committee for the Purchase of Commodities and Services
from the Handicapped
Qualifications for Participation
 - i. Bureau of Environmental Protection
Rules and Regulations Relating to Abandoned Mine Lands
and Reclamation
 - j. Bureau of Environmental Protection
Hazardous Waste Management Regulations

k. Bureau of Environmental Protection
Proof of Proper Solid Waste Disposal

l. Division of Natural Resources
Rules governing public use of WV State Parks, Forests,
Wildlife Management Areas under Division of Natural
Resources

3. Other Business:

Tuesday, December 6, 1994

9:00 a.m. - Noon

Legislative Rule-Making Review Committee
(Code §29A-3-10)

Keith Burdette
ex officio nonvoting member

Robert "Chuck" Chambers,
ex officio nonvoting member

Senate

House

Manchin, Chairman
Grubb
Anderson
Macnaughtan
Minard
Boley

Gallagher, Chairman
Douglas
Compton
Huntwork (absent)
Riggs
Faircloth

The meeting was called to order by Mr. Manchin, Co-Chairman.

The minutes of the November 14, 1994, meeting were approved.

Mr. Manchin stated that the rule proposed by the Environmental Quality Board, Requirements Governing Water Quality Standards has been removed from the agenda.

Debra Graham, Committee Counsel explained that the rule proposed by the Department of Health and Human Resources, Behavioral Health Patient Rights Rule had been laid over at the previous meeting to allow the Department to develop language on several proposed modifications. Kay Howard, representing the Department, distributed proposed modifications and responded to questions from the Committee. Dr. Garrett Moran, Commissioner of the Bureau of Community Support of the Department, answered questions from the Committee.

Ms. Douglas moved that the proposed rule be approved as modified. The motion was adopted.

Joe Altizer, Associate Counsel, stated that the rule proposed by the Office of Air Quality, To Prevent and Control Air Pollution from the Operation of Coal Preparation Plants and Coal Handling Operations, had been laid over at the previous meeting. He briefly reviewed his abstract on the proposed rule and stated that the Office was requesting the authority to modify the proposed rule as set forth in two letters to the Co-chairman dated November 10, 1994, and December 2, 1994, which had been distributed to the Committee.

Ms. Douglas moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Altizer stated that the rule proposed by the Office of Air Quality, Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration, had been laid over at the previous meeting.

Mr. Minard moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Altizer stated that the rule proposed by the Office of Water Resources, Dam Safety Regulations, had been laid over at the previous meeting. Brian Long, representing the Office, responded to questions from the Committee.

Ms. Douglas moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Altizer stated that the rule proposed by the Office of Water Resources, Regulations Governing Environmental Laboratories Certification and Standards of Performance, had been laid over at the previous meeting.

Ms. Douglas moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Altizer reviewed his abstract on the rule proposed by the Bureau of Environmental Protection, Rules and Regulations Relating to Abandoned Mine Lands and Reclamation, and stated that the Bureau has agreed to technical modifications.

Ms. Douglas moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Altizer explained the rule proposed by the Bureau of Environmental Protection, Hazardous Waste Management Regulations, and stated that the Bureau has agreed to technical modifications. Mike Dorsey, Assistant Chief for Compliance Monitoring and Performance, Office of Waste Management, responded to questions from the Committee.

Ms. Compton moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham stated that the rule proposed by the Alcohol Beverage Control Commission, Nonintoxicating Beer Licensing and Operations Procedures, had been laid over at the previous meeting. She reviewed her abstract on the proposed rule. Richard Atkinson, Alcohol Beverage Control Commissioner, responded to questions from the Committee and agreed to modify Sections 6.2.8.1 and 7.3 of the proposed rule.

Ms. Douglas moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham explained the rule proposed by the Committee for the Purchase of Commodities and Services from the Handicapped, Qualifications for Participation, and stated that the agency has agreed to technical modifications. She also pointed out that the agency had not complied with the statute regarding notice of the public hearing.

Mr. Faircloth moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Altizer stated that he questioned the authority of the Bureau of Environmental Protection to promulgate the rule, Proof of Proper Solid Waste Disposal, and that the Bureau has agreed to withdraw the proposed rule.

Mr. Altizer explained the rule proposed by the Division of Natural Resources, Rules governing public use of WV State Parks, Forests, Wildlife Management Areas under Division of Natural Resources, and stated that the Division has agreed to technical modifications. He and Cordy Hudkins, Chief of Parks and Recreation, answered questions from the Committee.

Mr. Gallagher moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham updated the Committee on the rules remaining for the Committee's consideration at its January meeting.

The meeting was adjourned.

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: December 6, 1994

TIME: 9:00am - Noon

NAME Present Absent Yeas Nays

Chambers, Robert "Chuck", Speaker

Brian Gallagher, Co-Chair

~~Riggs~~
~~Burk, Robert W., Jr.~~

Faircloth, Larry V.

Douglas, Vickie

Compton, Mary P.

Huntwork, John

Burdette, Keith, President

Joe Manchin, III Co-Chair

Anderson, Leonard

Grubb, David

Minard, Joseph

Macnaughtan, Don

Boley, Donna

TOTAL

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RE: _____

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

COMMITTEE: Legislative Rule-Making Review Com. DATE: December 6, 1994

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
Please print or write plainly CHET FLEMING	1 BUENA VISTA PLACE CHARS. WV 25302	WV RURAL WATER ASSOC	X WATER QUALITY STUDIES
R.M. Darr	1356 Homestead St	WV DEP OWR	IC needed
Bill Brannon	1201 Greenbrier St. Char.	WV DEP - OWR	
Bill Davis	124 Tiskelwah ^{Elk River WV}	AARP	
JOHN JOHNSTON	1558 WASHINGTON ST.	WV-DEP-OAQ	IF REQUESTED
K.O. DAMROW	1624 Kanawha Blvd E, dm	WV MINING & RECLAMATION	ONLY IF REQUESTED
Kay Howard	Charleston	DHHR	if needed.
Cordie Hudkins	Bldg 6, Rm 451 B	DNR/PARKS	
Ken Komoroski	1500 Oliver Pgh PA	Kirkpatrick + Lockhart	
Bill Samples	434 Market St. Cohasset, WV 26003	Cohasset, Pittsburgh Steel	
BILL SWEARINGEN	KOPPERS INDUSTRIES FOWANSEBE WV	KOPPERS INDUSTRIES	
Bob Foster	Charleston	WV MFG. ASSOC.	

Dist. 12-6-94
muting



ENVIRONMENTAL QUALITY BOARD

1615 Washington Street, East, Suite 301
Charleston, West Virginia 25311-2126
(304) 558-4002

Gaston Caperton
Governor

Fax: (304) 558-0899

Charles R. Jenkins
Chairman

December 5, 1994

RECEIVED

DEC 05 1994

The Honorable Brian Gallagher and
The Honorable Joe Manchin
Co-Chairmen, Legislative Rule-Making Review Committee
Building 1, Room 474-M
Capitol Complex
Charleston, West Virginia 25305

*Legislative Rule Making
Review Committee*

Dear Sirs:

By this letter, the Environmental Quality Board wishes to address the committee regarding the amendment adopted on November 14 regarding the "five mile rule" in the Water Quality Standards.

The language at issue is found at 46 CSR 1, section 46-1-7.2.a.B, which provides:

Each segment extending upstream from the intake of a water supply public (Water Use Category A) for a distance of five (5) miles or to the headwater, must be protected by prohibiting the discharge of any pollutants in excess of the concentrations designated for this Water Use Category in Section 8. Provided, however, that within a zone extending one half (1/2) mile above the intake, the chief, Water Resources Section, Division of Natural Resources, may establish for any discharge, effluent limitations for the protection of human health that require additional removal of those pollutants. (If a watershed is not significantly larger than either of the two (2) zones above the intake, the water supply section may include the entire upstream watershed to its headwaters.

This provision was adopted in the rule in 1986 after review and consideration of more than ten written comments which had been submitted to the Board by interested parties. It was noted in the Rationale Document submitted by the Board that year that this issue was "probably the most intensely debated issue in the current revision." The clear intent of the provision is to designate a zone of protection above drinking water intakes to ensure the protection of all waters which are used for human consumption.

The amendment adopted by this committee last month makes two

Honorable Brian Gallagher and
Joe Manchin, December 5, 1994
Page 2

changes to the language of 7.2.A.2. First, it adds language to the first sentence which changes the prohibition on discharges in the five mile zone in excess of the applicable numeric water quality standard to a requirement that the numeric standard be met at the water supply intake. The second change adds a requirement that the Chief of the Office of Water Resources, prior to imposing water quality criteria at the "end of pipe", must demonstrate that less stringent limits will adversely impact the water supply intake. These changes seem to confuse, rather than clarify the issue and further, they place a burden on the implementing agency which is at odds with the Board's intent.

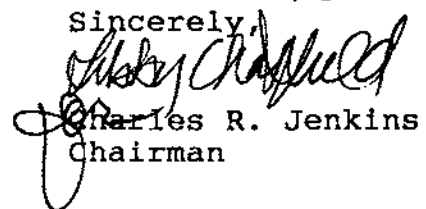
The need for the protection afforded by the existing language is exemplified in the stretch of the Ohio River between mile points 62 and 72. In that ten mile stretch, there are 6 permitted industrial facilities, one sewage treatment plant discharge and 5 public water supply intakes. Clearly, the job of preparing discharge permits which ensure compliance with water quality standards and protection of the drinking water drawn from this 10 mile stretch is a challenging task.

The Board is mindful of the economic impact that the five mile rule poses to some dischargers, and we do not take such impact lightly. However, the Board is reluctant to amend the rule without the input of all parties who have an interest in the change, including public health agencies, water utilities, industry and the people of the State whose drinking water supply may be affected.

The Board therefore respectfully requests that this committee reconsider the amendment and allow the Board to resolve this issue through its own means. First, the Board would like the opportunity to consider the issue in the appeal pending before it. Further, if a change in the rule is necessary, we would do so after holding a public hearing and providing an opportunity for written comments from all of those with an interest in this issue. While the Board is only required to review the water quality standards on a triennial basis, we would be willing, if necessary, to vary from that schedule and revisit this issue during the 1996 session.

We appreciate your thoughtful consideration of these comments.

Sincerely,


Charles R. Jenkins
Chairman



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Gaston Caperton
Governor

Office of Behavioral Health Services
Building 6, Room 717
Charleston, West Virginia 25306
Phone: (304) 558-0627 FAX: 558-1008

Gretchen O. Lewis
Secretary

MEMORANDUM

TO: Garrett E. Moran, Ph.D., Commissioner
Bureau for Community Support

FROM: John E. Bianconi, Assistant Director
Office of Behavioral Health Services

SUBJECT: Legal Aid Society of Charleston (LASC)

DATE: December 5, 1994

In response to your request the following information is provided:

- * LASC is a West Virginia incorporated, non-profit agency.
- * Founded in 1953 by a group of private lawyers donating time to providing legal assistance to poor persons.
- * Governed by a thirteen member board of directors comprised of 60% lawyers practicing in their four county legal service area (Kanawha, Putnam, Boone and Clay) and at least 33% of low income individuals who are financially eligible to be represented. This is a regulatory requirement of the federal "Legal Services Corporation".
- * Primary Activities:
 1. Legal assistance to low income people in civil disputes residing in the four county area mentioned above (estimated eligible persons to be 62,000).
 2. Regional Long-Term Care Ombudsman is a state and federally funded, statewide program required by the "Older Americans Act" for residents in nursing homes, personal care homes and other long-term care settings.

Proposed Additional Modifications to
Behavioral Health Rights Rule, 64 CSR 59
Presented to Legislative Rule-Making Review Committee
December 6, 1994

The text in items 1 and 2 below is new text to be added to the rule related to legal representatives. There are a few places in the rule where at least one of these decision makers are identified, and some clean-up will be necessary for consistency of usage. Item 3 identifies two modifications to be made in Section 12.

1. Text to be added in Section 3, Definitions

Legal Representative -

#.1. A conservator or limited conservator appointed pursuant to the West Virginia Guardianship and Conservatorship Act, W. Va. Code, Chapter 44A Articles 1-4, within the limits set by the order;

#.2. A guardian or limited guardian appointed pursuant to the West Virginia Guardianship and Conservatorship Act, W. Va. Code, Chapter 44A, Articles 1-4, within the limits set by the order;

#.3. A health care representative appointed pursuant to §§16-30-1 et seq., within the limits set by law and the appointment;

#.4. A medical power of attorney appointed pursuant to W. Va. Code §§16-30A-1 et seq., within the limits set by law and the appointment; or

#.5. A surrogate decision-maker appointed pursuant to W. Va. Code §§16-30B-1 et seq. or §§16-30C-1 et seq., within the limits set by law and the appointment.

#.6. Wherever this rule sets forth rights and responsibilities of an individual patient/resident in matters relating to informed consent for treatment or the withholding of treatment, record release, authorizations, disclosures of information, participation in treatment planning, suspension or restrictions of the individual's rights as granted or recognized in this rule, or in the laws of this State or of the United States government, or any other matters relating to the patient/resident's rights, the facility shall permit the individual's legal representative to act on behalf of the individual and to exercise the rights to the extent granted to the legal representative in the order or other document naming the legal representative or pursuant to the statute authorizing the legal representative and to the extent that the legal representative's acts are not hostile or adverse to the best

interests of the patient/resident. This provision does not relieve the facility of the responsibility of informing the individual patient/resident as required by this rule, to the extent that the individual is capable of understanding the matter.

#.7. If the patient/resident has a legal representative, the name, address and telephone number of the legal representative shall be recorded in the patient/resident's financial and clinical records, as applicable, along with the nature and scope of the authority granted to the legal representative by order, appointment or law. The facility shall further maintain a copy of the document documenting or designating the legal representative.

2. Text to be added to Section 11.4 - Clinical Records

If for any reason a patient/resident's rights are restricted as permitted within this rule, the restriction, the time limits of the restriction, the reason for the restriction and any other information relevant for the restriction shall be made a part of the client's fiscal or clinical record, as applicable. The entry of the restriction in the record shall be signed by the patient/resident's treating physician.

3. Modifications for §§12.1 and 12. New language is underlined.

12.1. Generally. Every patient shall have the right to unimpeded and private communication with whomever the patient chooses by mail, telephone, visits, or otherwise, except as specified in this rule.

12.4. Restrictions. Any deviation from the telephone and mail rights afforded by this section can only be authorized by the interdisciplinary team or the physician for a time specified by the team but to expire automatically after seven (7) days. A complete report relative to the restriction of telephone or mail rights and the reasons therefor shall be made a part of the patient's medical record, signed and dated by the patient's attending physician, and reflected in the patient's nursing care plan, and shall expire in three days unless reviewed.



Dist. 12-6-94
meeting

**DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF AIR QUALITY**
1558 Washington Street, East
Charleston, WV 25311-2599

Gaston Caperton
Governor

David C. Callaghan
Director
Laidley Eli McCoy
Deputy Director

November 10, 1994

The Honorable Joe Manchin, III
Co-Chairman, Legislative Rule-Making
Review Committee
Room 152-B
Capitol Complex
Charleston, West Virginia 25305

The Honorable Brian A. Gallagher
Co-Chairman, Legislative Rule-Making
Review Committee
Room 152-B
Capitol Complex
Charleston, West Virginia 25305

Dear Chairmen Manchin and Gallagher:

In regard to the proposed legislative rules scheduled for consideration by the Legislative Rule-Making Review Committee on Sunday, November 13, 1994 I am requesting that several minor technical corrections to three (3) rules be approved by the Committee. We have also met with Committee Counsel, Joe Altizer, to answer his questions concerning the Office of Air Quality's proposed rules and to discuss his suggested modifications.

The technical corrections requested for approval by the agency are as follows:

1. 45CSR15 - "Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 61": In subsection 3.1.a the reference to 40 CFR Part 61.6 of the Code of Federal Regulations should be changed to 40 CFR Part 61.16 to correct a typo in the proposed rule as filed.
2. 45CSR14 - "Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration": In subsection 2.6 the word "data" in the last line should be corrected to read "date". Also, the reference in the last line of subsection 2.6 to paragraph 2.32.b. should be corrected to reference paragraph 2.29.d. This latter reference error resulted from the reconstruction of several definitions in response to public comment on the proposed rule.
3. 45CSR5 - "To Prevent and Control Air Pollution from the Operation of Coal Preparation Plants and Coal Handling Operations": In paragraph 10.4.c. the words "exceeding twenty percent (20%) opacity" should be inserted after the word observations in the second line.

In addition to the technical corrections above, Mr. Altizer suggested a number of modifications to the Office of Air Quality's proposed rules during our meeting with him on October 7th which are addressed and or agreed to as follows:

1. With respect to 45CSR5 "To Prevent and Control Air Pollution from the Operation of Coal Preparation Plants and Coal Handling Operations" Mr. Altizer questioned whether subsection 4.8 appropriately conformed with the stated title and purpose of the rule and also suggested that subsection 4.5 could be written in a clearer and simpler way than that in the proposed rule. OAQ has carefully reviewed Mr. Altizer's comments and would concur in the deletion of subsection 4.8 and a rewrite of subsection 4.5 as follows:

45-5-4.5: "Except as provided in subsection 4.3, modifications made to any thermal dryer after March 1, 1970 that result in a significant increase in the total gas volume passing through the dryer shall subject the dryer to the emission limitations of subsection 4.2 even though such modifications do not include the installation of a new thermal dryer."

2. 45CSR6 - "To Prevent and Control Air Pollution from Combustion of Refuse": In all definitions, change the wording to state that the term "means" instead of "shall mean". In Section 5, line 1, substitute the word "rule" for the word "regulation".

3. 45CSR14 - "Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration": In subsection 2.24 delete the words "and regulations" after the word "rule" in line 4.

4. 45CSR16 - "Standards of Performance for New Stationary Sources": In subsection 6.1, last line, after the word "method," add the word "or" and in the same line delete the words "or regulation".

5. 45CSR33 - "Acid Rain Provisions and Permits": In subsection 4.1 remove the marked revisions: "~~June~~" and remove the line under the word "July".

6. 45CSR34 - "Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 60": In subsection 1.5 delete the last sentence. In subsections 3.3 and 4.1 remove marked revisions (the referenced date will be July 1, 1994).

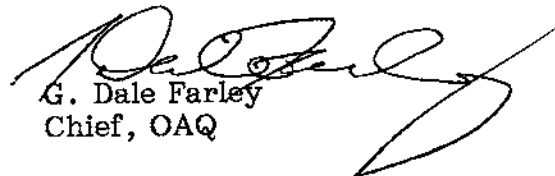
7. 45CSR35 - "Requirements for Determining Conformity of General Federal Actions to Applicable Air Quality Implementation Plans (General Conformity)" and 45CSR36 - "Requirements for Determining Conformity of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act, to Applicable Air Quality Implementation Plans": In subsection 2.4 of both rules after the term "Division of Environmental Protection" delete the word "or" and the quotes around the term "DEP" and insert parenthesis around the term "DEP". Retain Section 6 "Severability" only in 45CSR36.

The Honorable Joe Manchin, III
The Honorable Brian A. Gallagher
November 10, 1994
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8. 45CSR38 - "Provisions for Determination of Compliance with Air Quality Management Rules": In the headings for Sections 3 and 4 use dashes between the rule and section number instead of a period. Delete Section 6 "Severability".

Mr. Altizer suggested that Section 1 of all of the OAQ proposed rules must be modified with respect to the subsections concerning "Determination of Stringency" and "Constitutional Takings Determination". OAQ conformed its proposed rules to a format selected by the Division of Environmental Protection for all of its proposed rules but the agency will modify the rules in accordance with the requirements of the Legislature. It is my understanding that such modifications would require that the "Determination of Stringency" subsection be removed from the rule and be included as a separate attached document and the "Constitutional Takings Determination" subsection would be deleted from all OAQ proposed rules. OAQ also agrees to delete the "Severability" sections from all proposed rules except 45CSR35 as recommended by Committee Counsel.

Sincerely yours,


G. Dale Farley
Chief, OAQ

GDF/tlm

cc: Joseph Altizer
Counsel, LRMRC

David Callaghan
Director, DEP

Eli McCoy
Deputy Director, DEP

John Johnston
OAQ

Fred Durham
OAQ